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No. 368

In the Supreme Court of the United States

OCTOBER TERM, 1952

THE DE LA RAMA STEAMSHIP COMPANY, INC.,
PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE UNITED STATES

INDEX

CITATIONS

Cases:

	Page
Assessors, The v. *Osbornes*, 9 Wall. 567	3
Brady v. *Roosevelt S.S. Co.*, 317 U.S. 575	6
Bruner v. *United States*, 343 U.S. 112	3
Calmar Steamship Corporation v. *Sydney Keith Scott*, No. 303, this Term, certiorari granted, October 20, 1952	2
Calmar Steamship Corporation v. *United States*, No. 262, this Term, certiorari granted, October 20, 1952	2, 5, 6
De Lovio v. *Boit*, Fed. Cas. No. 3,776	5
Eastern Transportation Co. v. *United States*, 272 U.S. 675	5
Fleet Corporation v. *Rosenberg Bros.*, 276 U.S. 202	6
Frantz Equipment Company v. *United States*, 98 F. Supp. 579	2
Hallowell v. *Commons*, 239 U.S. 506	3
Insurance Company v. *Dunham*, 11 Wall. 1	5
Insurance Co. v. *Ritchie*, 5 Wall. 541	3
Jeffcott v. *Aetna Ins. Co.*, 129 F. 2d 582	5
Johnson v. *Fleet Corporation*, 280 U.S. 320	6
Kline v. *Burke Construction Co.*, 260 U.S. 226	3
Matson Navigation Co. v. *United States*, 284 U.S. 352	5, 6
New Jersey Worsted Mills v. *United States*, 9 F. Supp. 605	2
North German Fire Insurance Co. v. *Adams*, 142 Fed. 439	5
150 East 47th Street Corporation v. *Porter*, 156 F. 2d 541	3
Standard Oil Company of New Jersey v. *United States*, 340 U.S. 54	3
United States v. *Fortier*, 342 U.S. 160	3
United States v. *Kromer* (No. 1101), 330 U.S. 812	3
United States v. *McNair*, 180 F. 8d 273	2
United States v. *Palletz* (No. 1100), 330 U.S. 812	3
United States v. *Wheelbarger*, 331 U.S. 791	3
Wood v. *Hills*, 334 U.S. 210	3

Statutes:

Joint Resolution of July 25, 1947, 61 Stat. 449	2
Suits in Admiralty Act, 41 Stat. 525, as amended, 46 U.S.C. 741-752	2, 4, 5
1 U.S.C. 109	3

Statute—Continued

	Page
18 U.S.C. 3231	3
28 U.S.C. 1345	3
28 U.S.C. 1509	2
28 U.S.C. 2501	2
War Risk Insurance Act of September 2, 1914, 38 Stat. 711, 712, Section 5	4
War Risk Insurance Act of June 29, 1940, 54 Stat. 689, as amended, 46 U.S.C. (1940 Ed.) 1128-1128h	1
Section 221	4
Section 222	4
Section 225	2, 3, 4, 5, 6

Miscellaneous:

Hearings before House Committee on Merchant Marine and Fisheries on H.R. 6572, 76th Cong., 1st Sess., 21-24, 49, 83 (1939)	4
House Report No. 2499, 76th Cong., 3d Sess., 7	3
Senate Report No. 1942, 76th Cong., 3d Sess., 10	3

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MEMORANDUM FOR THE UNITED STATES

The United States does not oppose the granting of a writ of certiorari in this case limited to the question of the jurisdiction of the district court. Petitioner's additional question, relating to interest (Pet. 15-16), was not considered by the court below and the decision of the district court is not alleged to be in conflict with the decision of any other court on the question. Accordingly, that question is not appropriately presented for consideration by this Court.

The court below has decided that the repeal of the War Risk Insurance Act of June 29, 1940, 54 Stat. 689, as amended, 46 U.S.C. (1940 Ed.) 1128-1128h, by the Joint Resolution of July 25, 1947, 61

Stat. 449, 450, extinguished the jurisdiction of the district court over petitioner's pending libel on a war risk insurance policy (R. 1556-1558, 1560).[1] This decision not only appears to be inconsistent with the decision of the Court of Appeals for the Ninth Circuit in *United States* v. *McNair*, 180 F. 2d 273, but also involves a question of some general importance affecting a substantial number of pending cases, as indicated by Appendix II of petitioner's brief.[2]

If the jurisdiction of the district court over petitioner's libel is considered as resting solely upon Section 225 of the War Risk Insurance Act, 46 U.S.C. (1940 Ed.) 1128d, the decision of the court below may well have been correct. Decisions of this Court have firmly established that where jurisdic-

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[1] Section 225 of the War Risk Insurance Act, 46 U.S.C. (1940 Ed.) 1128d, provided for suits against the United States in the district courts on war risk insurance claims in accordance with the provisions of the Suits in Admiralty Act, 46 U.S.C. 741-752.

[2] The importance of the decision may be heightened by the fact that relief in the Court of Claims, suggested in the decision below, would in most instances appear to be barred by that court's statute of limitations, 28 U.S.C. 2501, and even in those cases in which a protective suit was filed in the Court of Claims exercise of that court's jurisdiction might be prohibited by 28 U.S.C. 1500. Cf. *Frantz Equipment Company* v. *United States*, 98 F. Supp. 579 (C. Cls.); *New Jersey Worsted Mills* v. *United States*, 9 F. Supp. 605 (C. Cls.).

Moreover, a somewhat related question as to the extent of the jurisdiction of district courts under the Suits in Admiralty Act has been raised in *Calmar Steamship Corporation* v. *United States*, No. 262, this Term, certiorari granted, October 20, 1952, in which we did not oppose the granting of the petition. (See also *Calmar Steamship Corporation* v. *Sydney Keith Scott*, No. 303, this Term, certiorari granted, October 20, 1952.) The decision of the Court of Appeals in that case, as here, would require that suits on certain maritime causes of action against the United States be brought in the Court of Claims. See *infra*, pp. 5-6.

tion depends upon a statute, the repeal of that statute without a savings clause as to pending cases extinguishes all jurisdiction as to such cases. *Bruner* v. *United States*, 343 U.S. 112, 115-117; *The Assessors* v. *Osbornes*, 9 Wall. 567, 575; *Insurance Co.* v. *Ritchie*, 5 Wall. 541, 544-545; cf. *Wood* v. *Hills*, 334 U.S. 210, 215-217. See *Kline* v. *Burke Construction Co.*, 260 U.S. 226, 234. However, although the general savings statute, 1 U.S.C. 109, relates primarily to substantive liabilities, *Bruner* v. *United States*, *supra*, 117; *Hallowell* v. *Commons*, 239 U.S. 506, 508, it may, as suggested by its words, be operative "for the purpose of sustaining any proper action * * * for the enforcement of" a liability incurred under a repealed statute where the jurisdictional provision involved was an intrinsic part of the substantive provisions of that statute.[3] And here Section 225 appears to have been an intrinsic part of the War Risk Insurance Act.[4]

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[3] But the cases of *United States* v. *Kromer* (No. 1101) and *United States* v. *Falletz* (No. 1100), 330 U.S. 812, *United States* v. *Wheelbarger*, 331 U.S. 791, and *United States* v. *Fortier*, 342 U.S. 160 (cited Pet. 11-12) may not rest upon the general savings clause at all but upon the fact that in those cases jurisdiction remained in the district courts to enforce the preserved liabilities and penalties by virtue of the general jurisdictional statutes relating to criminal matters and civil cases involving the United States as plaintiff. 18 U.S.C. 3231; 28 U.S.C. 1345. But cf., *Standard Oil Company of New Jersey* v. *United States*, 340 U.S. 54; *150 East 47th Street Corporation* v. *Porter*, 156 F. 2d 541 (E.C.A.).

[4] Such a provision was considered necessary to provide adequate and uniform legal machinery for enforcement of claims against the United States. See Senate Report No. 1942, 76th Cong., 3d Sess., 10; House Report No. 2499, 76th Cong., 3d Sess., 7; Hearings before House Committee on Merchant Marine and Fisheries on H.R. 6572, 76th Cong., 1st Sess., 21-24, 49, 83 (1939). A similar provision had been

But even if it is true that the repeal of the War Risk Insurance Act deprived district courts of the jurisdiction conferred upon them by Section 225 of that Act, in this case jurisdiction may have remained in the district court by virtue of the provisions of the Suits in Admiralty Act, 41 Stat. 525, as amended, 46 U.S.C. 741-752.[5]

By Sections 221 and 222 of the War Risk Insurance Act, 46 U.S.C. (1940 Ed.) 1128, 1128a, the former United States Maritime Commission was given broad authorization to issue marine insurance and reinsurance on vessels, cargoes, and personnel, including not only vessels operated for the United States but also, for example, privately owned and privately operated vessels, their commercial cargoes, and their personnel. Basic jurisdiction of maritime claims against the United States under the Suits in Admiralty Act, however, is limited to causes of action arising out of the operation of vessels owned by or in the possession of the United States or operated by or for the United States when employed as merchant vessels. 46 U.S.C. 741, 742. Congress, accordingly, in enacting Section 225 of the War Risk Insurance Act, conferred upon the district courts a broader jurisdiction than that which they may have previously possessed under the Suits in Admiralty Act, so as to encompass those war risk insurance claims which are not included

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made in Section 5 of the War Risk Insurance Act of September 2, 1914, 38 Stat. 711, 712, prior to the enactment of the Suits in Admiralty Act.

[5] This proposition does not appear to have been presented to, or considered by, the court below.

in the class described in the Suits in Admiralty Act.[6] Such claims, however, were to be heard and decided in accordance with the provisions of the Suits in Admiralty Act. Although that extension of jurisdiction was necessary to accomplish these enlarged purposes of the War Risk Insurance Act, it may be argued that it was superfluous in cases, such as this, where the vessel involved was "operated * * * for the United States" as a "merchant vessel" under a requisition time charter (Fdgs. 15, 21, R. 1508, 1510-1511), because in such cases suit might previously have been brought against the United States on a marine war risk insurance policy directly under the Suits in Admiralty Act, 46 U.S.C. 741, 742; cf. *Matson Navigation Co.* v. *United States*, 284 U.S. 352; *Eastern Transportation Co.* v. *United States*, 272 U.S. 675.[7] If this view is accepted, Section 225 of the War Risk Insurance Act merely confirmed the jurisdiction already existing under the Suits in Admiralty Act as to this type of case, and since the claim here involved is one which might properly have been asserted directly under the provisions of the Suits in Admiralty Act,[8] repeal of the War Risk Insurance

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[6] See footnote 4, *supra*.

[7] It is well established that admiralty has jurisdiction over suits on policies of marine insurance. *Insurance Company* v. *Dunham*, 11 Wall. 1, 21; *De Lovio* v. *Boit*, Fed. Cas. No. 3,776 (C.C.D. Mass.); *North German Fire Insurance Co.* v. *Adams*, 142 Fed 439 (C.A. 7) *Jeffcott* v. *Aetna Ins. Co.*, 129 F. 2d 582 (C.A. 2).

[8] Even under the decision of the Second Circuit in *Calmar Steamship Corporation* v. *United States*, No. 262, the present claim is of the type cognizable under the Suits in Admiralty Act, since the cargo was commercial in nature.

Act would not extinguish the jurisdiction of the district court or transfer jurisdiction of the case to the Court of Claims.

We know of no pending war risk insurance claims which could not have been brought directly under the Suits in Admiralty Act under the view of that Act advanced by the petitioner in *Calmar Steamship Corporation* v. *United States*, No. 262. Under that view there would seem to be little necessity—if the above argument as to the Suits in Admiralty Act be accepted—for this Court's determining whether such suits also may still be brought under Section 225 of the War Risk Insurance Act despite the repeal of that section. And if that argument is accepted, the decision below, in so far as it suggests that repeal of the War Risk Insurance Act transferred jurisdiction of pending war risk insurance claims to the Court of Claims, would be in conflict with the well settled rule that where there is jurisdiction of a maritime claim against the United States under the Suits in Admiralty Act that jurisdiction is exclusive. *Matson Navigation Co.* v. *United States*, 284 U.S. 352, 356; *Johnson* v. *Fleet Corporation*, 280 U.S. 320; *Fleet Corporation* v. *Rosenberg Bros.*, 276 U.S. 202; see *Brady* v. *Roosevelt S.S. Co.*, 317 U.S. 575.

On the other hand, if the Second Circuit's position on the Suits in Admiralty Act in *Calmar* is sustained, this Court might have to determine whether jurisdiction under Section 225 of the War Risk Insurance Act still survives, since some of the

pending war risk insurance claims would not then be cognizable under the Suits in Admiralty Act.

CONCLUSION

The United States does not oppose the granting of a writ of certiorari in this case limited to the question of jurisdiction.

Respectfully submitted,

ROBERT L. STERN,
Acting Solicitor General.

OCTOBER 1952.

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